

FILED

FEB 12 2013

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Benjamin Cunningham

(347) 879-1717

2429 Southern Blvd #1

Bronx, New York 10458

(Pro-se) Plaintiff

AGAINST

FOIA's Appeal Agency

U.S. Department OF Justice

Office OF Information Policy #11050

1425 New York Avenue

Washington, DC 20530-0001

United States Attorney's Office

Southern District OF New York

86 Chambers Street 3rd Floor

New York, NY 10007

Case: 1:13-cv-00188

Assigned To : Collyer, Rosemary M.

Assign. Date : 2/12/2013

Description: FOIA/Privacy Act

FBI's Agency

*935 PENNSYLVANIA AVE, NW
WASHINGTON: DC 20535*

Congressman Jose E. Serrano (D-NY)

(202) 225-4361

2227 Rayburn HOB

Washington, DC 20515 & "Etc"

Defendants

Respectfully,

B. C.
Benjamin Cunningham
(Pro-se) Plaintiff

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Benjamin Cunningham,

(Pro-se) Plaintiff

AGAINST

U.S. Attorney Office Southern District;

FOIA Appeal Agency;

U.S. Congressman Jose E. Serrano (D-NY)

FBI's Agency and "Etc",

Defendants

AFFIDAVIT

TRUE FACTS

FOIA Agency

Appeal File

#AP-2013-00936

New York State

Bronx County) SS:

I, Benjamin Cunningham, (Pro-se) Plaintiff, duly declare that under the penalty of perjury all True Fact Statements filed within this legal document are true on February 11, 2013, which will be filed against Defendants inside United States District Courthouse, District OF Columbia, which concerns FOIA Appeal Agency's order dated December 21, 2012:

“ If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. Section 552(a)(4)(B). “

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FOIA Appeal Agency's Order
Dated December 21, 2012 has
Advised (Pro-se) Plaintiff To
Seek Federal Relief Inside
Federal District Courthouse:

“ You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to records concerning your alleged Federal Crime Victims status located in the United States Attorney's Office for the Southern District of New York. After carefully considering your appeal, I am affirming EOUSA's action on your request. EOUSA informed you that it could locate no records responsive to your request in its files. I have determined that EOUSA's action was correct and that it conducted an adequate, reasonable search for responsive records.

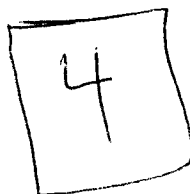
Please be advised that his Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your underlying request, and the actions of EOUSA in response to your request. If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. Section 552(a)(4)(B). “

Federal Employees Who Are
Willfully CONCEALING
Federal Crime Victim Decision
From Benjamin Cunningham:

Marie O' Rourke-Ombudsman Staff
(202) 252-1010
Federal Crime Victim Agency

Kristina Norris- FBI Special Agent
(212) 348-1000
26 Federal Plaza
New York, NY

David Kennedy-AUSA
United States Attorney's Office
Civil Rights Unit
86 Chambers Street
New York, NY 10007



November 29, 2005, Federal Marshal Police Officers conducted an illegal Search/Seizure upon the (pro-se) plaintiff's Bronx County Home WITHOUT exigent circumstance; WITHOUT search warrants WITHOUT legal consent and WITHOUT probable cause/reasonable cause because they were looking for a North Carolina State's federal fugitive.

USMS Police Officers placed their federal handcuffs upon (pro-se) plaintiff's body because (pro-se) plaintiff Protested against their searches.

(Pro-se) Plaintiff ran outside his home wearing NO clothes and NO shoes in to street area and sustained body injury from a NYC's Police Training Academy Recruit Bus loaded ONLY with Transit Recruit Police.

USMS Police Officers told NYC's Police Recruits to: Take off now! Don't file any accident reports! NYC's Police Recruits complied to USMS Police's instructions.

Subsequently, USMS Police Officers carried plaintiff back inside the house where USMS Police Officers released their federal handcuffs from (pro-se) Plaintiff's body. USMS Police Officers then advised plaintiff to seek medical attention. USMS Police Officers quickly ran outside (pro-se) plaintiff's Bronx County Home and departed (pro-se) plaintiff's neighborhood.

Benjamin Cunningham's N.Y.C. 911 Sprint Report #08-PL104373 has reported Police Bus Accident Federal Crime to NYC's 911 Emergency Operator:

“ 10-53H PEDSTER STRUCK. HIS APT WAS SEARCHED HE WAS HANDCUFFED STS WAS HIT BY BUS FULL OF PD ACADEMY TRAINEES. “

EMS' Report #70244167 dated November 29, 2005 has reported the Police Bus Accident Federal Crime:

“ Arrested by federal agents, in search for fugitive brother, struck on (L) side by bus. “

Bronx County's 48th Precinct Police Report dated November 29, 2005 noted the Police Bus Accident Federal Crime:

“ 911 OPR#1402 connected C/V Benjamin Cunningham to C/C who reports the following: 20 unidentified (alleged) federal agents knocked on his door and inquired as to the whereabouts of his brother Terrence Cunningham who was wanted by police for unknown reasons. C/V states when he opened the door he was pushed pass and his apartment was ransacked, when he inquired further about a search warrant and tried to explain the suspect was not there C/V was handcuffed at which time he ran out of apartment and into street where a bus loaded with transit police recruits sideswiped him and kept on going. “

” OII received a complaint forwarded to us from NYPD Internal Affairs. I contacted Internal Affairs and requested copies of the police reports generated by NYPD regarding the complaint made by Benjamin Cunningham against USMS employees. I was informed that as soon as they realized the allegation was against USMS employees they closed the case and referred it to the USMS. According to NYPD, there were no police reports generated by their office. Their files reflect the complaint was referred to the USMS Internal Investigations’ Office. “

(Alonda A Guilbeau-Chief Inspector (202) 307-9597)

New York State Crime Victim Board Agency’s order dated November 13, 2008 filed by General Counsel Mr John Watson-Esq (518) 457-8062 has clearly stated under file #508119:

“ In order to receive an award from the Crime Victim Board, criminal justice agency records must show that the crime was reported to the proper authorities less than one week after the crime, unless the Board finds good cause for the delay. We have investigated your case but cannot locate a criminal justice agency report on this incident. Therefore, this claim must be disallowed. However, your file may be reopened if you submit a criminal justice agency report that was filed within a week of the crime or if filed after that time period, you can provide good cause for the late filing. “

” This is in response to your request for assistance in identifying a New York City Transit bus operator. You reported that November 29, 2005, at 5:30am, while federal police searched your home, you ran into street seeking help and boarded a bus which was transporting police recruits to/from the training academy. You indicated that you requested that the bus operator call “911”. As everyone on the bus was a police officer, they responded, “we are 911”. You further reported that the federal police carried you off the bus by your hands and feet and you were injured. They told the bus operator to drive away and not to file any report. You subsequently filed a federal lawsuit and need to identify the bus operator to support your case. On December 16, 2008, you met with two members of my staff and provided them with all the information you had regarding the incident. In our effort to identify bus operator, we conducted an extensive investigation of our records. Unfortunately, in the absence of a bus number or badge number, we are unable to identify the bus operator. Our operational records do not indicate any report filed for the incident. In addition, there is no record of a bus being loaned to the police or used to transport police on the date in question. As this incident occurred a few years ago, we also checked our records for the day before and the day after the date you indicated.”

(New York City Transit Authority Agency’s)
response letter dated December 23, 2008



“ We also had to searched a dark, unfinished basement. Mr Cunningham attempted to interfere with the search on more than one occasion, repeatedly ordering us to leave his house. At some point, he was placed in handcuffs to prevent him from impeding the search, and because we believed he might have been the person we were looking for. As we were searching the home and after he had been handcuffed, Mr Cunningham fled out of the front door of the house, yelling loudly and trying to attract attention to himself. He managed to board a bus of NYPD Transit Officers, who briefly detained him and transferred him back into our custody. Shortly thereafter, we found his identification and verified that he was Benjamin Cunningham and not his brother Terrence. The aforementioned confidential informant provided the Task Force with additional information in early January 2006, which led deputies in Maryland area to arrest Terrence Cunningham in January 2006. “

(DUSM Nicholas Ricigliano's Declaration dated)
dated September 8, 2010

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Marie O' Rourke- Federal Crimes Victims Ombudsman (202) 252-1010 advised Benjamin Cunningham to apply for Federal Crime Victims Status in New York.

Subsequently, Benjamin Cunningham applied for Federal Crime Victim Status at the Office OF Crime Victims' Agency located at 26 Federal Plaza, Manhattan New York.

Kathryn Turman-Federal Crime Victims Program Director in New York contacted Kristina Norris-Special FBI Agent in order to conduct Federal Crime Victims Intake/Interview.

Kristina Norris-Special FBI Agent (212) 348-1000 conducted the Federal Crime Victim Intake/Interview with Benjamin Cunningham seeking Federal Crime Victim Status.

Subsequently, several weeks later, it was FBI Special Agent Ms Kristina Norris who contacted Benjamin Cunningham and stated Federal Crimes Victim Status was DENIED by David Kennedy (AUSA) because Federal Marshals Police were acting under the colors of law.

Kristina Norris-FBI; David Kennedy (AUSA); Kathryn Turnman- Program Director and John W. Gills Director have DENIED a written decision to Benjamin Cunningham.

Therefore, Benjamin Cunningham filed a Civil Rights case against the above Office OF Federal Crime Victims Agency's employees to (SDNY) Judge Leonard B. Sand (09 Civ. 1768 (LBS):

February 25, 2009, (SDNY) Leonard B. Sand's fact findings under docket (09 Civ. 1768 (LBS) clearly states:

“ Plaintiff appears to alleged that on November 29, 2005, members of the United States Marshal Service “unlawfully broke into (his) home without search warrants; injured (his) Body; searched (his) home; seized items (and) more(,) then departed quickly.” Plaintiff also alleges that he was beaten and handcuffed by members of the United States Marshal Service, and was “bounced off” of a bus. Plaintiff alleges that he resides in Bronx, New York, and that he made a “911” telephone call seeking assistance from New York City Police Department (“NYPD”). Plaintiff also alleges that police officers from the NYPD’s 48th Precinct came to his home and made a police report, however, they were “told not to file police report into (New York City’s computer database).” Plaintiff further alleges that the above-mentioned police report is now “missing.” It appears that plaintiff alleges that he filed a claim for crime victim benefits from the New York State Crime Victims Board (Board”), but has been denied such benefits because no corresponding police report could be located by the Board.

Attachment “Amended Decision of the Board, dated Nov 13, 2008 (“Amended Decision”).



February 25, 2009, (SDNY) Leonard B. Sand's fact findings under docket (09 Civ. 1768 (LBS) clearly states:

“ Plaintiff also appears to allege that he has attempted to file a claim for crime victim benefits from the federal government, however, he alleges that Defendant Norris, alleged to be employed by the Federal Bureau of Investigation as a Special Agent “for Crime Victims,” informed him that his application was denied “because Federal Marshals were acting under color of law.” Plaintiff alleges he appealed that denial to Defendant Gills, who is alleged to be the Director of the United States Department of Justice’s Office for Victims of Crime (“OVC”), but that Defendant Gills has not “responded” to plaintiff’s appeal. “

PLEASE NOTE:

(United States Post Office’s Certified Receipt)
#7008-1140-0003-1765-3994)
displays the fact that OVC’s Agency signed
and received Benjamin Cunningham’s
OVC Agency’s Appeal

February 25, 2009, (SDNY) Leonard B. Sand's order under docket (09 Civ. 1768 (LBS) DISMISSED my Civil Rights complaint against Justice Department's Office for Victims of Crime which happen to be the Federal Crime Victims' Agency:

“ Plaintiff, who appears pro se, brings a complaint seeking an order from the Court directing the “Federal Crime Victim Office located inside (the) FBI Agency to provide crime victim benefits (and) counseling to (plaintiff) which include(s) paying all medical bills (he) sustained from injuries caused by U.S. Federal Marshal's police misconduct.” Plaintiff also seeks an order from the Court directing the “Federal Crime Victim Office to provide additional medical services to (him)” and “to reimburse (him the) \$4,600 (that the) Federal Marshals seized from (plaintiff's) home (and) for documents that were (also) seized from (plaintiff's) home (and) for documents that were seized from (his) home.” Plaintiff's action is dismissed.

Southern District Court's Docket Sheet States:

February 25, 2009 complaint received by Judge Sand.

February 25, 2009 no ANSWER filed by defendants.

February 25, 2009 complaint DISMISSED by Judge Sand.

CONCLUDED ARGUMENT:

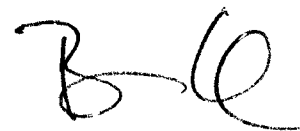
WHEREFORE, (pro-se) plaintiff is requesting federal employees to provide copy of (pro-se) plaintiff's Federal Crime Victim Written Decision to the Court and to (pro-se) plaintiff soon as possible which are:

Marie O' Rourke-Ombudsman Staff
(202) 252-1010
Federal Crime Victim Agency

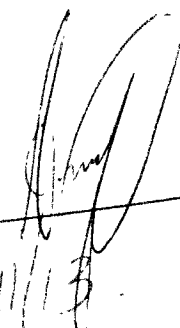
Kristina Norris- FBI Special Agent
(212) 348-1000
26 Federal Plaza
New York, NY

David Kennedy-AUSA
United States Attorney's Office
Civil Rights Unit
86 Chambers Street
New York, NY 10007

Respectfully,



Benjamin Cunningham

X - 
2/11/13

